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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,877	03/23/2001	Randall C. Arnold	AUGA15000005	7377

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EXAMINER

KEARNEY, ROSILAND STACIE

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,877

Applicant(s)

ARNOLD ET AL.

Examiner

Rosiland S Kearney

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-71 is/are pending in the application.
- 4a) Of the above claim(s) 38, 39, 41-43, 48-53, 55, 59, 60, 63, 64, 69 and 71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-37, 40, 44-47, 54, 56-58, 61, 65-68 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 5. 6) ☐ Other:

Art Unit: 3739

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species XII in Paper No. 7 is acknowledged.

Examiner withdraws claims 38, 39, 41-43, 48-53, 55, 59, 60, 62, 63, 64, 69 and 71 for being directed towards a non-elected invention.

This invention pertains to several patentably distinct species of a thermal blanket and a plug used with the blanket. Figure 15 refers to a transverse blanket and incorporates plug (100) of Figure 1. Through the election of Figure 15, it is understood by the Examiner that the Applicant is also electing the embodiment of the plug contained in figure 1, since this plug is illustrated in Figure 15.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34 & 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickerhoff et al. '439. Dickerhoff et al. disclose an apparatus for warming a person comprising an inflatable cover (10) for disposition on a portion of a person's body, two inlet ports (30, 40) in the inflatable cover and a plug (col. 3 lines 13-17) removable received in at least one port of the two ports.

Claim R ejections - 35 USC § 103

Art Unit: 3739

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Philpot et al. '145 further in view of Dickerhoff et al. '439. Philpot et al. disclose an inflatable cover (10) and an inlet port (36). Philpot et al. teach all of the limitations of the claim except multiple ports and a plug removable received in at least one of the ports. Dickerhoff et al. disclose a similar device and teach that it is old and well known to provide multiple ports and a removable plug. The advantages of the multiple ports and removable plug include, the choice of positioning the air supply and the ability to switch inlets during use thereby allowing the surgeon full access to the patient. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to provide additional ports and a removable plug in the Philpot et al. device, to provide a choice in positioning the air supply and the ability to switch inlets.

Claims 36, 37, 40, 44, 45-47, 54, 56-58, 61, 65-68 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philpot and Dickerhoff as applied to claim 35 above, and further in view of McCord '474. Philpot and Dickerhoff teach all of the limitations of the claims except the plug including a planar central body and a plurality of extensions and the plug is a wood pulp material.

McCord discloses a closure apparatus that includes a planar central body (34) and a plurality of extensions (42, 44) that is easily removable. Therefore, it would have

Art Unit: 3739

been obvious to one having ordinary skill in the art at the time the invention was made to provide a plug having a planar body and a plurality of extensions as taught by McCord to enhance the ease of operability of the device.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the plug of wood pulp material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 35, 36, 37, 40, 44-47, 56-58, 61, 65-68 and 70 are rejected under the judicially created doctrine of double patenting over claims 2-4, 7, 11, 12, 13 and 14 of U. S. Patent No. 6228107 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming

Art Unit: 3739

common subject matter, as follows: an inflatable cover, multiple inlet ports and a plug removable received in at least on of the ports.

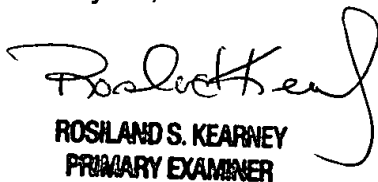
Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application that matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S Kearney whose telephone number is 703/3082711. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 703/3080994. The fax phone numbers for the organization where this application or proceeding is assigned are 703/3080758 for regular communications and 703/3080758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/3080858.

RK
July 24, 2002


ROSILAND S. KEARNEY
PRIMARY EXAMINER